SINCE the appearance of the December number, seven more students — five in the first-year class, and two specials — have entered the School. This brings the total registration up to one more than four hundred.

In addition to the extra instruction announced in the Annual Catalogue, Professor Beale is delivering a course of six lectures on the Law of Damages, — substantially a repetition of those given by him two years ago.

THERE are many reasons why the REVIEW takes great pleasure this month in offering to its readers an article from Sir Frederick Pollock. Harvard men naturally feel an interest in him, because of his very cordial references in the past to the Law School and its methods. Apart from that, no English lawyer off the bench is better or more deservedly known in this country than he, both on account of his prominence in the reform of English legal education, and through his books. But from its own standpoint the REVIEW is most of all gratified in numbering him among its contributors because he stands on the other side of the Atlantic, or indeed throughout the English-speaking world, for the very best — if such a way of putting it is not too presumptuous — in the REVIEW's own field. The Law Quarterly Review, which Sir Frederick Pollock has edited from the start, was as new a departure in England as it certainly would have been in the United States. It was the first periodical there, and is still the only one, which has given the scientific, the historical, and the philosophical aspects of the law an equal place by the side of those that are more practical. Its readers know with what ability it has fulfilled its double purpose, and also — a thing one cannot often say of legal literature — they are grateful indeed for the refreshing excellence of its literary quality. In the sense of furnishing a lawyer's armory with weapons for immediate use, such a magazine may not be so serviceable as one which deals more exclusively with litigated questions. But, after all, one hears that kind of argument quite often enough; it comes from the same spirit which is fast making the law in this country, or at least struggling to make it, a trade rather than a profession. Even in England there are not wanting signs of a like spirit; and it is perhaps Sir Frederick Pollock's best claim to gratitude that his whole effort, as editor, author, and educator, has been given to resist it.

ORDERLY CONDUCT AS CONSIDERATION. — The Northwestern Law Review for February objects to a recent decision of the Supreme Court of Victoria that the defendant's agreement to pay a stipulated monthly sum to his divorced wife, in consideration that she "shall conduct herself with sobriety, and in a respectable, orderly, and virtuous manner," is binding. One judge dissented, on the ground of vagueness. That objection, however, seems hardly sufficient; for these adjectives, general as they are, have such a well-defined meaning, especially as applied to a woman, that it would seldom be difficult to apply them. The promise to a boy in consideration that he would not "bore" his father, is decidedly a more extreme case, and was properly held too vague.

The court also seems correct in holding that there was a detriment, since, as moral laxity and legal liability are not coextensive, the woman gave up her undoubted legal right to an occasional mild intoxication, as well as her right to enjoy company and manners that are permitted by law, but not by society. A large class of useful citizens spend their lives mostly

within this borderland, and surely to renounce it may be the basis of a contract right.

The serious difficulty in such cases is always one of fact, whether there was the intention to give the promise in exchange for the abstinence. (It is usually clear that the abstinence is in exchange for the promise.) It is on this ground that it is natural to find apparent conflicts, as in promises of reward from fathers to sons for various kinds of good conduct; for it is almost impossible in many cases to tell a promise to make a gift on a condition, from an offer for a contract. As a rule it is really a case of guessing on rather subtle psychological grounds, and the courts probably keep as near to the facts in leaning towards finding a consideration as they would in tending the other way.

OWNERSHIP AND POSSESSION OF AEROLITES. — A case which has excited much comment in the last few months is that of *Goodard* v. *Winchell*, 52 N. W. Rep. 1124, decided by the Supreme Court of Iowa. An aerolite, weighing sixty-six pounds, fell on the prairie land of the plaintiff, and embedded itself to a depth of three feet below the surface of the soil. The grass privilege of the land had been leased by the plaintiff to a tenant, by whose order the aerolite was dug up and sold to the defendant. The plaintiff brought an action in replevin against the defendant. Counsel for the defence invoked the rule of title by occupancy, and cited Blackstone to prove that "occupancy is the taking possession of those things which before belonged to nobody," and that "whatever movables are found upon the surface of the earth, or in the sea, and are unclaimed by any owner, are supposed to be abandoned by the last proprietor, and as such are returned into the common stock and mass of things; and therefore they belong, as in a state of nature, to the first occupant or finder." The plaintiff prevailed, however, the court being of opinion that the aerolite was not a "movable" within the spirit of the rule cited. The reasoning on which the decision proceeds is most ingenious; thus, we find "that to take from the earth what nature has placed there in its formation, whether at the creation or through the natural processes of the acquisition and depletion of its particular parts, as we witness it in our daily observation, whether it be the soil proper or some natural deposit, as of mineral or vegetable matter, is to take a part of the earth, and not movables." Whether or not one believes this to be the true underlying theory of the decision, — and the correctness of the result actually reached is undoubted, — one cannot but regret that the court failed to consider the question of possession as well as that of property, so often have the facts of the case provoked discussion.

There are two essential elements to actual possession of a chattel: (1) the power of control, which is a question of fact; and (2) an intention to make a use inconsistent with the right of another to immediate control. The second element includes, of course, the intention to prevent others from interfering with the proposed use. The intention governs, and has been considered from either of two points of view. Holmes believes it to be the intention to exclude others; while the German writers look upon it as the intention to use for one's own purposes, without reference to others. That power of control must be coupled with intention to exclude in order that there may be actual possession, is shown by Holmes in an apt illustration. "If," he writes, "there were only one other man in the world, and he was safe under lock and key in jail, the person having the